



December 29, 1999

Ms. Kristi DeCluitt  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR99-3011A

Dear Ms. DeCluitt:

You ask this office to examine Open Records Letter No. 99-3011 (1999), because this office failed to consider your properly claimed exceptions to disclosure. Your request was assigned ID# 130729.

The City of College Station ("the city") received a request for "any and all documents dealing with any previous litigation or threatened litigation concerning the Rock Prairie Road Landfill."<sup>1</sup> In Open Records Letter No. 99-3011 (1999), this office incorrectly stated that you had withdrawn your claimed exception to disclosure of the requested information. In fact, in your September 29, 1999 correspondence to this office, you indicated that you did not wish to withdraw any claimed exceptions for this particular request for information. Accordingly, we will now address your claimed exceptions and arguments for the information you seek to withhold. You have submitted Exhibit 2 as a representative sample of the documents you seek to withhold.<sup>2</sup> Open Records Letter No. 99-3011 (1999) is superceded and this decision is substituted in its place.

You claim that information submitted as Exhibit B is excepted from required public disclosure by sections 552.103, 552.107, and 552.111 of the Government Code. We do not believe, however, that the responsive information that you have submitted may be withheld from disclosure. Exhibit 2 consists of two legal documents, a petition and defendant's

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<sup>1</sup>You refer to this request as PWKMM Request No. 29.

<sup>2</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

original answer, which have been filed with a Texas district court. Section 552.022 of the Government Code now provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

\* \* \* \*

(17) information that is also contained in a public court record.

We do not believe that the exceptions you raise “expressly [make] confidential under other law” the information you have submitted. Open Records Decision Nos. 630 (1994), 551 (1990); *see Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992) (documents filed with the court are public documents and must be released). Furthermore, even in the absence of section 552.022(17), we do not believe that either of the claimed exceptions would protect the submitted pleadings from disclosure. Tex. R. Evid. 503(a)(5); Open Records Decision Nos. 658 at 7 (1998) (information provided to opposing party not a “confidential communication” protected by the attorney-client privilege), 630 (1994), 561 at 9 (1990) (privity of interest or common deliberative process must exist for section 552.111 to apply for communications between entities), 474 at 2-3 (1987) (communications between agencies and other third parties not protected by section 552.111); 349 (1982) (once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information), 320 (1982). The materials submitted as Exhibit B must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

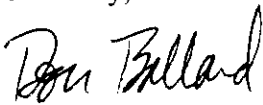
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Don Ballard  
Assistant Attorney General  
Deputy Chief, Open Records Division

JDB/ljp

Ref: ID# 130729

Encl. Submitted documents

cc: Mr. C.J. Kling  
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(w/o enclosures)